Claims 128 and 129 were rejected under 35 U.S.C. § 102(a) as anticipated by "Sxpur (Figure 10 dated January 7, 2004)." Initially, the quotation from the Office action refers, in fact, to a drawing, a copy of which is attached to this paper as Exhibit A. The first interview with the examiner mentioned above has confirmed this. Accordingly, the following discussion will refer to this reference as the "Szpur drawing."

(The present rejection obviously cannot rely upon Figure 10 of the subject application, which drawing bears no date. Applicants, in an earlier generation (U.S. patent application 08/573,465) of the subject application brought the Szpur drawing to the attention of the Patent and Trademark Office and clearly stated that Figure 10 of the subject application is, in fact, this Szpur drawing. Further, as discussed below, Applicants stated that they received a copy of the Szpur drawing on September 28, 1994. They also indicated that they had no knowledge of the creation, use, or other history of the Szpur drawing before September 28, 1994.)

Further, Claims 130 to 134 and 228 to 239 were rejected under 35 U.S.C. § 103(a) as obvious over the Szpur drawing in view of Barkalow et al. (U.S. patent 4,273,114). Claims 145, 146, 152, and 153 were rejected under 35 U.S.C. § 103(a) over the Szpur drawing in view of Szpur (U.S. patent 5,407,408). (The Office action states, on page 3, that the rejection has a basis in 35 U.S.C. § 103(a). However, the rejection appears in the portion of the Office action devoted to 35 U.S.C. § 103(a). Further, since the rejection combines two references (albeit with the same individual responsible for both) it would appear proper under 35 U.S.C. § 103(a). Consequently, this Response will discuss this rejection as governed by 35 U.S.C. § 103(a).)

Further, Claims 154 to 156, 171, 172, 178 to 182, 198, 199, 205 to 209, and 212 were rejected under 35 U.S.C. § 103(a) as obvious over the Szpur drawing in view of Szpur. Lastly, Claims 147 to 151, 173 to 177, and 200 to 204 were rejected under 35 U.S.C. § 103 as obvious over the Szpur drawing. in view of Szpur and Barkalow et al. Applicants respectfully traverse all of the foregoing rejections.

All of the rejections rely, at least in part, upon the Szpur drawing, Exhibit A. Accordingly, Applicants' response to the rejections requires an analysis of the appropriate standing and date, if any, ascribable to the Szpur drawing. Reverting to this drawing, Exhibit A, shows two dates on the face of the drawing, specifically January 7, 1994, and September 28, 1994. Of these dates, the latter and later, September 28, 1994, was written on the drawing by two of the current applicants, Thomas E. Lach and Kevin A. Kelly on the day that they first saw this drawing.

However, neither date proves acceptable to allow the use of the Szpur drawing, Exhibit A, as a reference questioning the patentability of the invention claimed in the subject application. To allow its use for this purpose against Applicants' claims, the Szpur reference, Exhibit A, must show an invention that was known or used in this country. This means that the invention, in order to constitute a proper reference under 35 U.S.C. must have been accessible to the public. As stated in the M.P.E.P., § 2132:

> ***"Known or Used" Means Publicly Known or Used***
>
> "The statutory language 'known or used by others in this country' (35 U.S.C. § 102(a)) means use or knowledge which is accessible to the public." *Carella v. Starlight Archery*, 804 F.2d 135, 231 U.S.P.Q. 644 (Fed.Cir. 1986).

However, there is a complete lack of any evidence or even any other information that Mr. Szpur had ever shown or disclosed or otherwise made his invention accessible to the public

in this country. Accordingly, it cannot constitute a reference under either 35 U.S.C. § 102(a) or § 103(a). Specifically, it does not constitute a reference until the issue of Applicants' prior U.S. patent 5,738,637 on April 14, 1998, which included the Szpur drawing, Exhibit A, as Figure 10. Thus, because of the lack of public accessibility, Szpur's drawing of Exhibit A cannot constitute a reference under 35 U.S.C. § 102(a) or 35 U.S.C. § 103(a).

The foregoing discussion should serve to obviate the Szpur drawing (Exhibit A) as a reference. Since all of the rejections listed above have the Szpur drawing (Exhibit A) as the only or the primary reference, this should prove adequate to obtain allowance of the present application.

Applicants believe that the above amendment and discussion have placed the present application in condition for allowance. They sincerely request this action. Should some minor impediment prevent this action, then the examiner is respectfully requested to contact Applicants' attorney at the telephone number given below. Hopefully, such a phone call will portend a substantial saving on the parts of the Patent and Trademark Office as well as Applicants.

Since the present Amendment responding to the August 6, 2007, Office action has been timely filed, no extension fee appears necessary. However, should that prove incorrect, then any required extension fee may be charged to Deposit Account 06-2135 of the undersigned attorney.

Respectfully submitted,

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CERTIFICATE OF FAXING

I certify that this correspondence is being faxed to the Commissioner for Patents at phone numbers (571) 273-8300 and (571) 273-4979 on October 15, 2007.

Eugene F. Friedman

Serial No. 10/633,938